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February 21, 2014

Writer's Direct Contact
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By E-mail

Hon. Stuart M. Bernstein
United States Bankruptcy Court
One Bowling Green
New York, NY 10004-1408

Re: *Picard v. Brierpatch Investment LLC*, Adv. Pro. No. 10-04402; *Picard v. Levy Trust*, Adv. Pro. No. 10-04721; *Picard v. DPF Investors*, Adv. Pro. No. 10-04475; *Picard v. Persky Foundation*, Adv. Pro. No. 10-05057; *Picard v. Berkowitz*, Adv. Pro. No. 10-5388.

Dear Judge Bernstein:

We represent the defendants in the above-referenced adversary proceedings. We moved to dismiss the Trustee's claims in each of the above actions in October 2011. We write to seek clarification from the Court regarding a letter we received from the Trustee yesterday that indicates a memorialization of this Court's order on February 14, 2014 (attached for the Court's reference as Exhibit A). In particular, we seek the Court's guidance on its directive that the Trustee respond to all pending motions to dismiss by March 10, 2014.

As you may be aware, this Court previously issued Avoidance Procedures that govern the Trustee's clawback actions (attached as Exhibit B). Pursuant to those Avoidance Procedures, because the amount at issue in each case is less than \$20 million, each case was referred to mandatory mediation prior to any briefing by the Trustee. The Trustee was required to initiate mediation by filing a Notice of Mediation Referral. To date, no such Notice has been filed. However, based on the Avoidance Procedures, we understand that these actions will proceed to mediation upon the filing of the Notice by the Trustee.

According to yesterday's letter from the Trustee, these cases are now slated for briefing on the motions to dismiss, as the above-referenced cases appear in Appendix A to the Trustee's letter. The Trustee's letter did note that certain cases which had previously been stayed were still subject to the Litigation Procedures Order, but made no mention of whether cases slated for mediation under the Avoidance Procedures were likewise excepted from this briefing.

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Accordingly, we respectfully request that the Court instruct us as to whether the Avoidance Procedures mandating mediation in this case are still in effect or, in the alternative, if the Trustee will now be required to oppose our clients' motions to dismiss.

We are available to discuss further if additional information would assist the Court.

Respectfully submitted,



LaShann M. DeArcy

Enclosures

cc: Mark Hirschfield

Exhibit A

BakerHostetler

Baker & Hostetler LLP

45 Rockefeller Plaza
New York, NY 10111

T 212.589.4200
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www.bakerlaw.com

David J. Sheehan
direct dial: 212.589.4616
dsheehan@bakerlaw.com

February 20, 2014

**VIA ECF AND ELECTRONIC MAIL TO
bernstein.chambers@nysb.uscourts.gov**

Honorable Stuart M. Bernstein
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Room 723
New York, New York 10004-1408

*Re: Securities Investor Protection Corporation v. Bernard L. Madoff Investment
Securities LLC, 08-01789 (SMB) (Substantively Consolidated)*

Dear Judge Bernstein:

We are counsel to Irving H. Picard, trustee (the "Trustee") for the substantively consolidated liquidation proceedings of Bernard L. Madoff Investment Securities LLC ("BLMIS") and the estate of Bernard L. Madoff under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA").

We write to memorialize and provide parties with notice of the Court's rulings made during the hearing held on February 14, 2014 (the "Hearing") with respect to, *inter alia*, the pending motions to dismiss in the innocent investor BLMIS adversary proceedings set forth on Appendix A hereto (the "Adversary Proceedings"). Specifically, the Court directed the Trustee and the parties as follows:

- the Trustee shall submit the instant letter identifying the Adversary Proceedings with pending motions to dismiss;
- the reply to the Trustee's Opposition to the Omnibus Motion to Dismiss filed by Becker & Poliakoff LLP shall be filed on or before February 21, 2014, with oral argument thereon to be held on March 12, 2014.
- other than the Becker & Poliakoff omnibus motion to dismiss referenced above, the Trustee shall file one omnibus opposition to all pending motions to dismiss pending in the Adversary Proceedings on or before March 10, 2014; and

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver
Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

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- all defendants party to pending motions to dismiss in the Adversary Proceedings shall coordinate with defense counsel copied on this letter and file one consolidated reply on or before March 17, 2014.

The Trustee reserves the right to supplement the list of Adversary Proceedings to the extent any (i) cases with pending motions to dismiss were inadvertently omitted or (ii) additional motions to dismiss that raise the same issues are filed after the date of this letter which the Trustee determines should be included in his Omnibus Opposition and subject to the Court's consolidated reply deadline.

In addition, with respect to certain parties' letter request for a stay and conference on this Court's Order Establishing Case Management Litigation Procedures dated November 10, 2010 ("Litigation Procedures Order"), the Court ruled as follows:

- the Litigation Procedures Order is not stayed and remains fully in effect; and
- the parties shall meet and confer to discuss coordinated discovery in the Adversary Proceedings and appear for another hearing before the Court on discovery matters on March 18, 2014.

The Trustee is available to respond should the Court have any questions.

Respectfully submitted,

/s/ David J. Sheehan

David J. Sheehan

cc (via email):

Kevin H. Bell, Esq.
Nicholas J. Cremona, Esq.
Edward J. Jacobs, Esq.
Amy E. Vanderwal, Esq.

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Hon. Stuart M. Bernstein
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**KLEINBERG, KAPLAN, WOLFF
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PRYOR CASHMAN LLP

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New York, New York 10036-6569

SCHULTE ROTH & ZABEL LLP

Marcy Ressler Harris
Jennifer M. Opheim
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New York, New York 10022

SEEGER WEISS LLP

Parvin K. Aminolroaya
77 Water Street
New York, New York 10005

APPENDIX A				
	Adv. Pro. No.	Defendant(s)¹	Date MTD Filed	Counsel for Defendant(s)
1.	10-04349	Pauline B. Feldman	2/18/14	Bernfeld, DeMatteo & Bernfeld, LLP
2.	10-04394	Frederic Z. Konigsberg	2/18/14	Bernfeld, DeMatteo & Bernfeld, LLP
3.	10-04396	Edith A. Schur	2/18/14	Bernfeld, DeMatteo & Bernfeld, LLP
4.	10-04408	Cheryl Yankowitz	2/18/14	Bernfeld, DeMatteo & Bernfeld, LLP
5.	10-04468	Ken-Wen Family Limited Partnership	2/18/14	Bernfeld, DeMatteo & Bernfeld, LLP
6.	10-04560	Richard E. Feldman	2/18/14	Bernfeld, DeMatteo & Bernfeld, LLP
7.	10-04561	Jeffrey R. Werner 11/1/98 Trust	2/18/14	Bernfeld, DeMatteo & Bernfeld, LLP
8.	10-04717	William Diamond	2/18/14	Bernfeld, DeMatteo & Bernfeld, LLP
9.	10-05094	The Estate of Carolyn Miller	2/18/14	Bernfeld, DeMatteo & Bernfeld, LLP
10.	10-05231	Trust under Deed of Suzanne R. May	2/18/14	Bernfeld, DeMatteo & Bernfeld, LLP
11.	10-04361	Harvey L. Werner Revocable Trust	2/18/14	Bernfeld, DeMatteo & Bernfeld, LLP
12.	10-04569	Stephen H. Stern	2/14/14	Richard E. Signorelli
13.	10-05393	Francis G. Rea	1/31/14	Richard E. Signorelli
14.	10-04772	M. Elliot Schnall	1/24/14	Herbert Biegel
15.	10-04421	A&G Goldman Partnership	1/17/14	Akerman LLP
16.	10-04850	Nathan Cohen Trust	1/17/14	Akerman LLP
17.	10-04843	Nathan Cohen	1/17/14	Akerman LLP
18.	10-04936	L. Rags, Inc.	1/17/14	Akerman LLP
19.	10-04962	Estate of Alvin Rush	1/17/14	Akerman LLP
20.	10-05046	Martin Gettinger	1/17/14	Akerman LLP
21.	10-05108	Marilyn Davimos 1999 Grat	1/17/14	Akerman LLP
22.	10-05399	Martin Lifton	1/17/14	Akerman LLP
23.	10-05433	Merida Associates, Inc.	1/17/14	Akerman LLP
24.	10-04404	Empire Prospect Partnership	1/17/14	Akerman LLP
25.	10-04423	Joel Busel Rev Trust	1/17/14	Akerman LLP
26.	10-04832	Richard E. Winter Rev Trust	1/17/14	Akerman LLP
27.	10-04713	Marsy Mittleman	1/17/14	Akerman LLP
28.	10-05436	Just Empire, LLC	1/17/14	Akerman LLP

¹ This column does not list all participating Defendants, but is merely indicative of the actions that filed motions to dismiss.

	Adv. Pro. No.	Defendant(s)	Date MTD Filed	Counsel for Defendant(s)
29.	10-04638	The Mittleman Family Foundation	1/17/14	Akerman LLP
30.	10-05223	Estate of Sam W. Klein	1/17/14	Akerman LLP
31.	10-04655	Jaffe Family Partnership	1/17/14	Lax & Neville LLP
32.	10-04756	Stephen B. Kaye	1/17/14	Lax & Neville LLP
33.	10-04900	Bonnie J. Kansler	1/17/14	Lax & Neville LLP
34.	10-04881	Jillian Wernick Livingston	1/17/14	Lax & Neville LLP
35.	10-04481	Armand Lindenbaum	1/17/14	Lax & Neville LLP
36.	10-04467	David S. Wallenstein	1/17/14	Lax & Neville LLP
37.	10-04307	Howard Solomon	1/17/14	Lax & Neville LLP
38.	10-04988	Wallenstein / NY Partnership	1/17/14	Lax & Neville LLP
39.	10-04827	Madeline Gins Arakawa	1/17/14	Lax & Neville LLP
40.	10-04289	John Fujiwara	1/17/14	Lax & Neville LLP
41.	10-04301	Frieda Bloom	1/17/14	Lax & Neville LLP
42.	10-04304	Elinor Solomon	1/17/14	Lax & Neville LLP
43.	10-04647	Abbit Family Trust	1/17/14	Lax & Neville LLP
44.	10-05169	Fairfield Pagma Associates	1/17/14	Lax & Neville LLP
45.	10-05246	Frances J. Le Vine Rev. Trust	1/17/14	Lax & Neville LLP
46.	10-04954	Ruth Kahn	1/17/14	Lax & Neville LLP
47.	10-04966	Onesco International	1/17/14	Lax & Neville LLP
48.	10-05036	Elinor Friedman Felcher	1/17/14	Lax & Neville LLP
49.	10-05048	Armand L. Greenhall	1/17/14	Lax & Neville LLP
50.	10-05160	Lanny Rose Rev. Trust	1/17/14	Lax & Neville LLP
51.	10-04573	Bruce Leventhal 2001 Irrevocable Trust	1/17/14	Lax & Neville LLP
52.	10-05400	Ted Goldberg	1/17/14	Wachtel Missry LLP
53.	10-04726	Lori Chemla	1/17/14	Wachtel Missry LLP
54.	10-04579	Shetland Fund Limited Partnership	1/17/14	Wachtel Missry LLP
55.	10-04896	Helene Juliette Feffer	1/17/14	Wachtel Missry LLP
56.	10-05372	O.D.D. Investment LP	1/17/14	Wachtel Missry LLP
57.	10-04502	Steven Schiff	1/17/14	Wachtel Missry LLP
58.	10-04363	Schiff Family Holdings	1/17/14	Wachtel Missry LLP
59.	10-04447	Franklin Sands	1/17/14	Wachtel Missry LLP
60.	10-04472	Daniel N. Silna	1/17/14	Wachtel Missry LLP
61.	10-04470	Silna Family Inter Vivos Trust	1/17/14	Wachtel Missry LLP
62.	10-04357	James Greiff	1/17/14	Dentons LLP
63.	10-04796	Howard Kaye	1/17/14	McClaughlin & Stern LLP
64.	10-04735	Kara Fishbein Goldman	1/17/14	Pryor Cashman LLP
65.	10-04944	Pergament Equities	1/17/14	Pryor Cashman LLP

	Adv. Pro. No.	Defendant(s)	Date MTD Filed	Counsel for Defendant(s)
66.	10-05194	Bruce D. Pergament	1/17/14	Pryor Cashman LLP
67.	10-05087	Steven J. Lifton	1/17/14	Meyer, Suozzi, English & Klein, P.C.
68.	10-04906	Steven V Marcus Separate Property of the Marcus Family Trust	1/16/14	Milberg LLP
69.	10-04861	Harold J. Hein	3/22/13	Dentons LLP
70.	10-04921	Stanley T. Miller	3/22/13	Dentons LLP
71.	10-04672	Sidney Cole	3/22/13	Dentons LLP
72.	10-04415	Barbara J. Berdon	3/22/13	Dentons LLP
73.	10-05209	Lapin Children LLC	3/22/13	Dentons LLP
74.	10-04332	Barry Weisfeld	3/22/13	Dentons LLP
75.	10-04401	Rose Gindel Trust	3/22/13	Dentons LLP
76.	10-05085	Eugene J. Ribakoff 2006 Trust	3/22/13	Dentons LLP
77.	10-05424	Frederia Ripley French Rev. Trust	3/22/13	Dentons LLP
78.	10-05224	David R. Markin	3/22/13	Dentons LLP
79.	10-04925	Alvin Gindel Rev. Trust	3/22/13	Dentons LLP
80.	10-05384	Neil Reger Profit Sharing Keogh	3/22/13	Dentons LLP
81.	10-05058	America Israel Cultural Foundation	3/22/13	Dentons LLP
82.	10-04951	Harold A. Thau	3/22/13	Milberg LLP
83.	10-04946	Stephen R. Goldenberg	3/22/13	Milberg LLP
84.	10-05089	John Denver Concerts	3/22/13	Milberg LLP
85.	10-04335	Melvin Knyper and Aspen Fine Arts Co.	3/22/13	Milberg LLP
86.	10-04966	Onesco International	3/22/13	Milberg LLP
87.	10-04978	Estate of Ira S. Rosenberg	3/22/13	Milberg LLP
88.	10-04725	Ruth E. Goldstein	3/22/13	Milberg LLP
89.	10-04601	Laurence E. Leif	3/22/13	Milberg LLP
90.	10-05069	Potamkin Family Foundation	3/22/13	Milberg LLP
91.	10-04576	Norton A. Eisenberg	3/22/13	Milberg LLP
92.	10-04741	William M. Woessner Family Trust	3/22/13	Milberg LLP
93.	10-04724	P. Charles Gabriele	3/22/13	Milberg LLP
94.	10-04582	Gerald Blumenthal	3/22/13	Milberg LLP
95.	10-05136	Richard Roth	3/22/13	Milberg LLP
96.	10-04540	Jonathan Sobin	3/22/13	Seeger Weiss LLP
97.	10-04341	James P. Marden	3/22/13	Pryor Cashman LLP
98.	10-04348	Marden Family Limited	3/22/13	Pryor Cashman LLP
99.	10-05194	Bruce D. Pergament	3/22/13	Pryor Cashman LLP

	Adv. Pro. No.	Defendant(s)	Date MTD Filed	Counsel for Defendant(s)
100.	10-05239	Robert Fried	3/22/13	Pryor Cashman LLP
101.	10-05439	Avram J. Goldberg	3/22/13	Pryor Cashman LLP
102.	10-05118	Charlotte M. Marden	3/22/13	Pryor Cashman LLP
103.	10-04575	Boslow Family Limited	3/22/13	Pryor Cashman LLP
104.	10-05397	Oakdale Foundation	3/22/13	Pryor Cashman LLP
105.	10-04565	Murray & Irene Pergament Foundation	3/22/13	Pryor Cashman LLP
106.	10-05022	Montbarry Inc.	1/18/13	Simon & Partners LLP
107.	10-04998	Estate of Hermen Greenberg	6/15/12	Arent Fox LLP
108.	10-05027	1776 K Street Associates	4/20/12	Arent Fox LLP
109.	10-04976	Eleven Eighteen Limited Partnership	4/20/12	Arent Fox LLP
110.	10-04865	Edward H. Kaplan	4/20/12	Arent Fox LLP
111.	10-05179	Liselotte J. Leeds Lifetime Trust	4/2/12	Dow Lohnes PLLC
112.	10-04336	Estate of Doris Igoi	4/2/12	Kelley Drye & Warren LLP
113.	10-04405	Estate of Elaine S. Fox	3/6/12	Cole, Schotaz, Meisel, Forman, & Leonard, P.A.
114.	10-05257	Edward A. Zraick	2/17/12	Hunton & Williams LLP
115.	10-04799	Marvin L. Olshan	2/3/12	Olshan Grundman Frome Rosenzweig & Wolosky LLP
116.	10-04774	Diane Wilson	1/31/12	Simon & Partners LLP
117.	10-05416	Ostrin Family Partnership	1/31/12	Richard Signorelli
118.	10-04338	Financière Agache	1/10/12	Barack Ferrazzano Kirschbaum & Nagelberg LLP
119.	10-04551	Douglas D. Johnson	1/4/12	Herrick, Feinstein LLP
120.	10-05255	Stefanelli Investors Group	12/20/11	Rattat Pasternak, LLP
121.	10-04629	Frank J. Lynch	12/14/11	McDermott Will & Emery LLP
122.	10-05109	F&P Lynch Family Partnership	12/14/11	McDermott Will & Emery LLP
123.	10-04959	Judith Pisetzner	12/14/11	Greenberg Traurig LLP
124.	10-05097	Pisetzner Family Limited Partnership	12/14/11	Greenberg Traurig LLP
125.	10-04463	Triangle Diversified Investments LLC	11/30/11	Dickstein Shapiro LLP
126.	10-05388	Lilyan Berkowitz	10/18/11	Morrison & Foerster LLP
127.	10-04475	DPF Investors	10/3/11	Morrison & Foerster LLP
128.	10-04402	Brierpatch Investments LLC	10/3/11	Morrison & Foerster LLP
129.	10-04721	George D. Levy Trust	10/3/11	Morrison & Foerster LLP
130.	10-05057	Joseph Persky Foundation	10/3/11	Morrison & Foerster LLP
131.	10-04460	Lexus Worldwide	10/3/11	Dickstein Shapiro LLP
132.	10-04370	Sidney Marks Trust 2002	9/5/11	Wilmer Cutler Pickering Hale and Dorr LLP

	Adv. Pro. No.	Defendant(s)	Date MTD Filed	Counsel for Defendant(s)
133.	10-04698	Nancy J. Marks Trust 2002	9/5/11	Wilmer Cutler Pickering Hale and Dorr LLP
134.	10-04511	Weithorn/ Casper Associates	6/24/11	Becker Meisel LLC
135.	10-04419	Katz Group Ltd Partnership	6/20/11	Becker Meisel LLC
136.	10-04495	Carl Glick	6/15/11	Becker Meisel LLC
137.	10-04435	Prospect Capital Partners	6/13/11	Becker Meisel LLC
138.	10-04662	Lexington Capital Partners	6/13/11	Becker Meisel LLC
139.	10-04294	David T. Washburn	6/13/11	Becker Meisel LLC
140.	10-04323	Weiner Family Ltd. Partnership	6/1/11	Fox Rothschild LLP
141.	10-04293	Marvin M. Weiner	6/1/11	Fox Rothschild LLP
142.	10-05371	L.H. Rich Companies	5/10/11	Garvey Schubert Baker
143.	10-04759	Howard Klee	4/1/11	<i>Pro se</i>
144.	10-04744	Irving J. Pinto 1996 Grantor Retained Trust	1/26/11	Filed By Bruce S. Schaeffer, but now unrepresented; Estate's Counsel: Joseph A. Roman
145.	10-04538	James B. Pinto Rev. Trust and James B. Pinto	1/26/11	Filed By Bruce S. Schaeffer, but now represented by Marvin Ingber / McClay Alton, P.L.L.P Estate's Counsel: Joseph A. Roman
146.	10-04588	Amy Pinto Lome Rev. Trust	1/26/11	Filed By Bruce S. Schaeffer, but now represented by Marvin Ingber / McClay Alton, P.L.L.P Estate's Counsel: Joseph Roman

Exhibit B

The Avoidance Procedures

1. Notice of Applicability:

- A. The Avoidance Procedures apply only to Avoidance Actions commenced by the Trustee after the approval of these Avoidance Procedures in which (a) the amount demanded in the complaint commencing the Avoidance Action (the "Complaint") is \$20 million or less and (b) the Trustee or the defendant files in such adversary proceeding a "Notice of Applicability" of these Avoidance Procedures. The Trustee or defendant may also file a Notice of Applicability in Adv. Pro. Nos. 10-3222 and 10-3223 pending in this Court (the "Bankruptcy Court"), in which case, the Avoidance Procedures will become applicable to such Avoidance Actions prospectively without extending any dates or deadlines that expired prior to the date such Notice of Applicability is filed. A Notice of Applicability may also be filed in Avoidance Actions where the amount demanded in the Complaint is more than \$20 million by mutual consent of the Trustee and the defendant(s) in such Avoidance Action. For purposes of these Avoidance Procedures, "Avoidance Actions" shall mean adversary proceedings commenced by the Trustee seeking the avoidance and recovery of preferences or fictitious profits (but not principal) under sections 78fff(b), 78fff-l(a) and 78fff-2(c)(3) of SIPA, sections 541, 542, 544, 547, 548, 550 and 551 of the Bankruptcy Code, sections 273 to 279 of New York Debtor and Creditor Law, and other applicable law.

2. Response:

- A. Except as provided below, the defendant(s) shall file and serve an answer or response to the Complaint within 60 days from the date of the issuance of the summons (the "Response Due Date"). Where a defendant is located in a country outside the United States, the time allotted for the Trustee to serve the summons shall be the date that is 120 days after the date of the issuance of the summons and the Response Due Date for such defendant shall be 180 days after the date of the issuance of the summons.
- B. No initial pre-trial conference pursuant to Bankruptcy Rule 7016 will be held in the Avoidance Actions and, accordingly, the summons filed and served by the Trustee will not include a date for a pre-trial conference.
- C. Upon request by a defendant, the Trustee may agree to one or more extensions of the Response Due Date with the extension(s) totaling no more than 90 days without further Court order. A "Notice of Extended Response Due Date" shall be filed in the adversary proceeding by the Trustee memorializing such agreement (whereupon, thereafter, the Response Due Date shall be the date set forth in the Notice).

- D. If a defendant files a motion under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim (a "Dismissal Motion"), made applicable by Bankruptcy Rule 7012, in response to the Complaint, the issues raised in such motion, together with the issues raised in the Complaint, are immediately referred to mediation; provided, however, that if the parties mutually agree that mediation is unlikely to resolve the issues raised by any such Dismissal Motion, that motion will not be referred to mediation and, instead, the parties will jointly request in a letter to the Court that the Court hear the Dismissal Motion on such schedule as the Court may determine. If a party brings any dismissal motion other than a motion under Federal Rule of Civil Procedure 12(b)(6), the Court will hear the matter on such schedule as the Court may determine.
- E. If the parties jointly agree in writing (which agreement the Trustee will file in the adversary proceeding) to enter mediation prior to the Response Due Date, the Response Due Date shall be deferred while the mediation is pending. If the mediation does not resolve the Avoidance Action, the Response Due Date shall be the date that is 30 days following the completion of the mediation. A "Notice of Extended Response Due Date" shall be filed in the adversary proceeding by the Trustee upon the termination of mediation setting forth the new Response Due Date (whereupon, thereafter, the Response Due Date shall be the date set forth in the Notice of Extended Response Due Date).
- F. Except as set forth above, further extensions of the Response Due Date shall not be granted except on motion upon a showing of good cause or by stipulation of the parties.
- G. Within 30 days after a defendant or, if more than one, the last defendant, files an answer to the Complaint, the parties shall meet, either in person or by teleconference, and confer on a mediation, discovery and litigation plan (the "Initial Case Conference"). The parties may agree to alter the deadlines set forth below upon mutual consent. Following the Initial Case Conference, the Trustee shall file with the Court a case management notice (the "Case Management Notice") (substantially in the form annexed hereto as Exhibit 2) which sets forth the various deadlines that will apply to the proceeding. The parties, upon mutual consent, may agree to alter the dates set forth in the Case Management Notice. Any such modifications shall be the subject of an amended case management notice (the "Amended Case Management Notice") which the Trustee shall file with the Court in the adversary proceeding.

3. Filing and Service of Pleadings:

- A. All pleadings shall be electronically filed with the Court in accordance

with Superseding General Order M-399 which is available on the Bankruptcy Court's website: (www.nysb.uscourts.gov). A copy of such order is also available on the Trustee's website: (http://www.madofftrustee.com/documents/Order_M-399.pdf).

- B. The Complaint and the summons must be served in accordance with the Bankruptcy Rules, unless the parties agree otherwise. If a defendant is known by the Trustee to be represented by counsel, the Trustee shall concurrently send to such counsel a courtesy copy of the summons and Complaint; provided, however, that the failure by the Trustee to provide such a courtesy copy shall not be deemed to constitute ineffective service of process if proper service was effected on the defendant in accordance with the Bankruptcy Rules. After a defendant has appeared, service of all pleadings in each Avoidance Action shall be made by email (i) to counsel of record or (ii) on the defendant if proceeding *pro se*. Except as set forth below with respect to *pro se* litigants, there shall be no obligation to serve paper copies of pleadings other than the Complaint and the summons.
- C. Parties subject to these Avoidance Procedures who file a pleading with the Bankruptcy Court are not required to serve the Trustee with such pleading and the Trustee will be deemed to have received notice of and been served with such filing via the Court's ECF notification. If a defendant is appearing *pro se* and is not able to electronically file a pleading with the Bankruptcy Court, that defendant shall so notify the Trustee in writing (Baker & Hostetler LLP, Attention: Marc Hirschfield, 45 Rockefeller Plaza, New York, NY 10111) and may thereafter serve the Trustee via United States Mail.
- D. Parties subject to these Avoidance Procedures who wish to serve the Trustee with a document not filed with the Bankruptcy Court (such as, for example, discovery requests) shall email such document to Trustee@MadoffLitigation.com and include the adversary proceeding number in the subject line of the email. Compliance with the foregoing shall be deemed effective service on the Trustee. If a defendant is appearing *pro se* and is not able to serve documents by email, that defendant shall so notify the Trustee in writing (Baker & Hostetler LLP, Attention: Marc Hirschfield, 45 Rockefeller Plaza, New York, NY 10111) and may thereafter serve the Trustee via United States Mail.
- E. Each defendant shall file a notice with the Court, on or before the Response Due Date, specifying the email address(es) for service of pleadings and documents on it. If a defendant is appearing *pro se* and is not able to receive pleadings and documents by email, that defendant shall so notify the Trustee in writing (Baker & Hostetler LLP, Attention: Marc Hirschfield, 45 Rockefeller Plaza, New York, NY 10111) and the Trustee shall thereafter serve such *pro se* defendant via United States Mail at such

address as the defendant shall request.

- F. All parties must send a courtesy copy, in paper form, of each motion, pleading or other filing to Judge Lifland at the following address: The Honorable Burton R. Lifland, United States Bankruptcy Court, One Bowling Green, New York, NY 10004-1408. The parties shall not, however, send to Chambers copies of discovery requests other than as a part of, and in connection with, a discovery motion.

4. **Discovery:**

- A. The discovery provisions of the Federal Rules of Bankruptcy Procedure and this Court's Local Bankruptcy Rules shall govern the discovery to be conducted in the Avoidance Actions, unless otherwise provided herein.
- B. Unless the parties agree to a different date, the initial disclosures provided by Rule 26(a)(1) of the Federal Rules of Civil Procedure (the "Federal Rules") shall be made within the later of (i) 60 days from the date of the Initial Case Conference or (ii) 180 days from the date the Complaint was filed (the "Initial Disclosure Date"). The parties shall have a continuing obligation to disclose discoverable information as well as to supplement all existing disclosures in accordance with Federal Rule 26(e)(1).
- C. The Trustee or a defendant may produce discovery, including initial disclosures, on a CD-ROM, in an electronic data room, or other similar electronic format. Given the volume of documentation that may be subject to disclosure in this matter, the Trustee or a defendant may produce a summary report, such as an expert report, and provide access to the underlying documentation on which the summary report relies in an electronic data room or other medium for review by the defendants. With regard to documents produced or made available electronically:
1. Information and documents disclosed shall be text searchable;
 2. Upon request, the Trustee or a defendant, as the case may be, shall provide data and image load files necessary to review documents on search platforms (i.e., Summation, Concordance, Relativity);
 3. The Trustee and defendant(s) shall produce any system-created or non-privileged captured objective metadata, such as date fields, author fields, custodian fields, path to native file, etc.;
 4. To the extent that documents are organized by date,

custodian, or subject matter, either because they were so maintained or because the Trustee so organized them, the Trustee shall produce such documents as organized; and

5. Nothing herein shall preclude the parties from requesting additional formats of production, metadata, or native documents.
- D. Notwithstanding the Global Protective Order dated February 16, 2010 [Docket No. 1951] (the "Global Protective Order"), materials containing non-public personal information and/or sensitive financial information, including, Confidential Account Material (as defined in the Global Protective Order) may be designated by the Trustee as "Professionals' Eyes Only." The Trustee will provide access to such Confidential Account Materials only to attorneys of record in one or more Avoidance Actions and other professionals working with that attorney on such Avoidance Action(s) provided that the attorney and/or the other professional executes a non-disclosure agreement in substantially the form attached hereto as Exhibit 3 (the "Non-Disclosure Agreement"). Copies of the Global Protective Order and Non-Disclosure Agreement are available on the Trustee's website:
(http://www.madofftrustee.com/documents/Non-Disclosure_Agreement.pdf). Nothing herein or in the Global Protective Order shall prevent any defendant from sharing Confidential Account Material pertaining to that defendant with other defendants in other Avoidance Actions, with accountants, financial or other consultants, or as deemed appropriate by the defendant to whom the Confidential Account Material relates.
- E. In the event of a discovery dispute between the parties, the parties shall meet and confer in an attempt to resolve the dispute. If not resolved, the parties shall comply with Local Bankruptcy Rule 7007-1 with respect to resolution of the dispute.
- F. Unless the parties agree to a different schedule, all fact discovery in an Avoidance Action shall be completed within 210 days after the Initial Disclosure Date. No further fact discovery shall be conducted after that date absent order of the Court upon a showing of good cause.
- G. Unless the parties agree to a broader scope, absent further order of the Court upon a showing of good cause, discovery will be limited solely and specifically to nonprivileged matters to the extent discoverable under Federal Rule 26(b)(1) which relate to: (a) the calculation of net equity for the defendant's BLMIS account; (b) the financial condition of BLMIS; (c) the activities of BLMIS, including both fraudulent conduct, including the Ponzi scheme, and legitimate operations; (d) the defendant's account documents and customer correspondence and interactions with BLMIS, its

records of BLMIS; (e) the internal records of BLMIS; (f) transfers of money by and among BLMIS; (g) the defendant's good faith or lack thereof, including issues related to the defendant's actual or constructive notice of fraudulent activity by BLMIS or anyone acting on its behalf; (h) disclosures made by BLMIS under federal and/or state laws, such as disclosures to the SEC; and (i) the identity of other persons or entities that may be liable for the transfers at issue, whether as subsequent transferees or for some other reason.

- H. The parties may take depositions of fact witnesses during the period for fact discovery after initial disclosures have been made. The Trustee shall make his financial professionals submitting expert evidence on behalf of the Trustee available for depositions and may coordinate such depositions in multiple Avoidance Actions to maximize efficiency and use of resources. The Trustee shall notify all interested parties of the proposed date, time and location of any such depositions to be coordinated in multiple Avoidance Actions. To the extent a deposition is so coordinated, the limitations set forth in Federal Rule 30(d)(1) shall not apply, and the parties shall agree on an appropriate duration for the deposition. Depositions of the Trustee are prohibited absent an order issued by this Court upon a showing of good cause.
- I. Notwithstanding Local Bankruptcy Rule 7033-1(b), the parties are permitted to serve substantive interrogatories at any time prior to the date which is 90 days prior to the completion of fact discovery. Unless the parties otherwise agree or the Court otherwise orders upon a showing of good cause, each party will be limited to propounding no more than 25 interrogatories (inclusive of subparts).
- J. Unless the parties agree otherwise, Federal Rule 26(a)(2) disclosures of the experts on any issue a party must prove in connection with a claim or defense shall be made within 60 days after the deadline for completion of fact discovery.
- K. Unless the parties agree otherwise, Federal Rule 26(a)(2) disclosures of the parties' rebuttal experts, if any, shall be made within 90 days after the deadline for completion of fact discovery or 30 days after receipt of the other party's corresponding expert report, whichever is later.
- L. Unless the parties agree otherwise, all expert discovery shall be concluded within 180 days after the deadline for completion of fact discovery.
- M. To the extent that the Trustee proffers an expert witness on an issue that is common to more than one Avoidance Action, the Trustee may coordinate such deposition in multiple Avoidance Actions to maximize efficiency and use of resources. The Trustee shall notify all interested parties of the proposed date, time and location of any such depositions to be coordinated

in multiple Avoidance Actions. To the extent a deposition is so coordinated, the limitations set forth in Federal Rule 30(d)(1) shall not apply, and the parties shall agree on an appropriate duration for the deposition. Depositions of the Trustee are prohibited absent an order issued by this Court upon a showing of good cause.

- N. All depositions of the Trustee's fact and expert witnesses shall occur at the offices of Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, NY 10111, or such other location as the Trustee may agree. Depositions of other parties' expert and fact witnesses shall occur at such place as the parties shall mutually agree.
- O. Any party seeking to make a discovery-related motion shall comply with Local Bankruptcy Rule 7007-1.
- P. Except as specifically set forth in these Avoidance Procedures, the Global Protective Order shall apply to all discovery in the Adversary Proceedings. Notwithstanding the applicability of the Global Protective Order, nothing therein or herein shall prevent any defendant from sharing Confidential Information with codefendants or defendants named in other Avoidance Actions, or with accounting, financial, or other consultants retained in the litigation, provided that such persons have executed the Non-Disclosure Agreement. A copy of the Global Protective Order is available on the Trustee's website:
(http://www.madofftrustee.com/documents/Global_Protective_Order.pdf).

5. Mediation Procedures:

- A. All of the Avoidance Actions are referred to mandatory mediation. Except as set forth above or unless the parties opt for mediation at an earlier stage of the litigation, each Avoidance Action shall be referred to mediation upon the completion of discovery. The Trustee shall file in the adversary proceeding a notice of mediation referral (the "Notice of Mediation Referral") at the time the litigation is being referred to mediation.
- B. Except as is set forth herein, the mediation shall be conducted in accordance with General Order M-390 (the "Mediation Order") which is available on the Bankruptcy Court's website: (www.nysb.uscourts.gov). A copy of such order is also available on the Trustee's website: (http://www.madofftrustee.com/documents/Order_M-390.pdf)
- C. Within 14 calendar days after the filing of the Notice of Mediation Referral, the Trustee and defendant(s) shall choose a mediator in accordance with the Mediation Order. If the parties are unable to agree on

a mediator, the Court shall appoint one in accordance with the Mediation Order.

- D. Promptly after the filing of the Notice of Mediator Selection, the Trustee and defendant's counsel (or the defendant if appearing *pro se*) shall jointly contact the selected Mediator to discuss the mediation.
- E. The parties shall exchange position statements, which may not exceed twenty pages double-spaced in 12 point type (exclusive of exhibits and schedules), at least 10 days prior to the scheduled mediation. The Mediator may also require the parties to provide to the Mediator any relevant papers and exhibits, and a settlement proposal.
- F. All mediations must be concluded within 120 days of the date of the Notice of Mediator Selection, which deadline may be extended by the mutual consent of the parties to the mediation and the Mediator.
- G. The parties shall participate in the mediation in good faith and with a view toward reaching a consensual resolution. The mediation(s) shall be attended by a representative for each of the parties with full settlement authority and, if a defendant is represented, their counsel, as well as counsel for the Trustee (who shall have settlement authority). Any defendant shall be able to participate in the mediation telephonically and if a defendant is unable to attend the mediation in person or telephonically because of advanced age or poor health, the mediation may be attended by the defendant's counsel only, provided that he or she has settlement authority.
- H. In mediations where the allegedly fraudulent transfers or preferences sought in the Complaint total \$20 million or less, the Trustee shall pay the reasonable fees and reasonable expenses of the Mediator. Fees and expenses in all other mediations will be apportioned as set forth in the Mediation Order, unless otherwise agreed by the parties.
- I. No Mediator shall mediate a case in which he/she or his/her law firm currently represents a party with respect to the BLMIS proceeding without the prior written consent of all parties to the mediation. Prior to accepting an Avoidance Action for mediation, the Mediator shall disclose to the Trustee and the defendant(s) any such representations. If a Mediator's law firm represents any defendant in the Avoidance Actions or other avoidance actions brought by the Trustee, then (a) the Mediator shall not personally participate in the representation of that defendant and (b) the Mediator's law firm shall impose an ethical wall which ensures that the Mediator will not have access to the defendant's file and/or communicate about the defendant's case or the mediation with anyone working on the defendant's case. The Mediator's participation in mediation pursuant to

the Avoidance Procedures shall not create a conflict of interest with respect to the representation of such defendant by the Mediator's law firm.

6. Motion Practice:

- A. Prior to the close of discovery, no motions may be made without the Court's prior approval, which may be sought, on notice to other parties to the action, by letter to the Court; provided, however, that (i) motions to dismiss, motions for withdrawal of the reference, and motions for default judgment may be made without the Court's prior approval, and (ii) routine procedural motions (e.g., motions to intervene or to amend a pleading) may be made without the Court's prior approval only if the moving party obtains the consent of all other parties to the action. Notwithstanding anything contained herein to the contrary, a letter request for a pre-motion conference with the Court shall be sufficient to be deemed compliant with the requisite time period for the motion or answer.
- B. Any party seeking to file a summary judgment motion shall comply with Local Bankruptcy Rule 7056-1.
- C. All matters concerning any Avoidance Action shall, barring exigent circumstances, only be heard on an omnibus hearing date before the Honorable Burton R. Lifland (collectively, the "Avoidance Action Omnibus Hearings"). The initial Avoidance Actions Omnibus Hearings shall be held on January 26, 2011, February 16, 2011, March 23, 2011, April 27, 2011, May 25, 2011 and June 29, 2011. Thereafter, Avoidance Actions Omnibus Hearings shall be scheduled approximately every thirty (30) days at the convenience of the Court. The Trustee shall file and serve notices of the scheduling of the omnibus hearings in the Avoidance Actions and post the scheduled dates on the Trustee's website: (http://www.madofftrustee.com/documents/Omnibus_Hearing_Dates.pdf).
- D. The Trustee shall file a report in the main SIPA proceeding (Adv. Pro. No. 08-01789) at least one week prior to each Avoidance Action Omnibus Hearing setting forth the status of each of the Avoidance Actions scheduled to be heard at the Avoidance Action Omnibus Hearing. The Trustee shall also deliver a copy of the report to Judge Lifland's Chambers and serve each of the applicable defendants.

7. Pre-trial Conference / Trial:

- A. After all discovery has been completed and after the completion of mediation without a settlement, the parties to the Avoidance Action shall so inform the Court at the next scheduled Avoidance Actions Omnibus Hearing. At such time, the Court will address any additional issues, set

additional deadlines, if necessary, establish a due date by which the parties must file a joint pre-trial order, and schedule a trial. The parties to an Avoidance Action in which discovery has been completed need not await the completion of discovery in all Avoidance Actions before scheduling trial.

8. Miscellaneous:

- A. These Avoidance Procedures shall control with respect to the Avoidance Actions to the extent of any conflict with other applicable rules and orders.
- B. Nothing herein shall prevent the Trustee or any defendant in an Avoidance Action from seeking relief from the provisions of these Avoidance Procedures, upon a showing of good cause, by appropriate application to the Court in accordance with the procedures set forth herein.
- C. Nothing herein shall prevent the parties to any Avoidance Action from voluntarily exchanging information or engaging in settlement discussions at any time; provided, however, that any such voluntary exchange of information shall in no way be construed as a waiver of any of the requirements or limitations contained in these Avoidance Procedures.
- D. Noncompliance with the Avoidance Procedures may result in such sanctions as the Court deems appropriate on the non-complying party after notice and a hearing.
- E. The Trustee shall serve a copy of the Order approving these Avoidance Procedures on each defendant in the Avoidance Action at the time he serves the summons and Complaint.
- F. The Trustee shall post and maintain a copy of these Avoidance Procedures (together with any amendments or modifications thereto) on his website: (http://www.madofftrustee.com/documents/Avoidance_Procedures.pdf).